

**EXHIBIT A**  
**TO DECLARATION OF MICHAEL N. EDELMAN**  
**IN SUPPORT OF PLAINTIFF ADVANCEME, INC.'S**  
**MOTION FOR SANCTIONS**  
**AGAINST DEFENDANT FIRST FUNDS, LLC**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADVANCEME : DOCKET NO. 6:05CV424  
:   
VS. : TYLER, TEXAS  
: June 27, 2007  
RAPID PAY : 9:05 A.M.

MOTIONS HEARING  
BEFORE THE HONORABLE JOHN D. LOVE,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

MR. RONALD LEMIEUX  
MR. MIKE EDELMAN  
MR. ROBERT MATZ  
PAUL HASTINGS JANOFSKY &  
WALKER  
FIVE PALO ALTO SQUARE  
SIXTH FLOOR  
PALO ALTO, CALIFORNIA 94306

MR. OTIS CARROLL  
MS. DEBORAH RACE  
IRELAND, CARROLL & KELLEY  
P.O. BOX 7879  
TYLER, TEXAS 75711

FOR THE DEFENDANT:

MR. BILL SCHUURMAN  
MR. JOSEPH GRAY  
VINSON & ELKINS  
2801 VIA FORTUNA, SUITE 100  
AUSTIN, TEXAS 78746

MR. MATT ROWAN  
POTTER MINTON  
P.O. BOX 359  
TYLER, TEXAS 75710

**COPY**

1 THE COURT: All right. Ms. Morris, you may call  
2 the case.

3 THE CLERK: Court calls Case Number 6:05CV424,  
4 AdvanceMe versus Rapid Pay, et al, and Case Number 6:06CV82,  
5 AdvanceMe versus Amerimerchant.

6 THE COURT: Announcements?

7 MR. CARROLL: Good afternoon, Your Honor. Otis  
8 Carroll for AdvanceMe. Ron Lemieux, Mike Edelman and Robert  
9 Matz are all here also. Mr. Lemieux will be presenting for us.

10 THE COURT: All right. For Defendants?

11 MR. ROWAN: Good afternoon, Your Honor. Matt Rowan  
12 on behalf of Defendant First Funds and Defendant AmeriMerchant  
13 in the two stated cases. Mr. Joey Gray and Mr. Bill Schuurman  
14 are here. Mr. Gray will be presenting on the one motion and  
15 Mr. Schuurman on the other.

16 THE COURT: All right. Thank you. We're here on  
17 several motions. We're here on several motions, a couple on  
18 the 424 case and a couple in the 82 case. I think I would  
19 first like to take up 262, which has essentially a companion  
20 motion in the 82 case. I believe that's 132. So that's where  
21 I would like to go first. Who will be arguing that for  
22 AdvanceMe? Mr. Lemieux?

23 MR. LEMIEUX: Excuse me, Your Honor. I'm not  
24 familiar with the docket numbers. Is that the Bieler --

25 THE COURT: No, that is the motion for sanctions.

1 And coming back to that, so they have never accused the  
2 ACH process of infringement until they filed this motion for  
3 sanctions. You know why they haven't? Because it doesn't  
4 infringe. It clearly doesn't infringe any claim. It's even  
5 more prior art than the prior art that formed the subject of  
6 our summary judgment motions.

7 If we had known that they were accusing the ACH process  
8 of infringement, we would have brought in additional prior  
9 art that everybody knows about.

10 So as Mr. Gray indicated that we knew that they had  
11 accused the split funding process only. If this were a  
12 damages case, we would have produced all of the documents  
13 relating to the ACH process. Why? To show that it's a  
14 non-infringing alternative.

15 It cannot infringe if the merchant processor doesn't  
16 forward any money to First Funds. It simply cannot  
17 infringe. There's no issue about that. Everybody knows  
18 that.

19 So that witness was not prepared to deal with that. As  
20 Mr. Gray says, he was the person who was brought up to speed  
21 on all of the topics. We objected to a number of the  
22 topics. He wasn't prepared to testify on a non-accused  
23 system.

24 Mr. Gray gave the example of Dell. I represented Dell  
25 lots of times. We get a lawsuit accusing Dell computer

1 systems of infringement. Do we go and produce billions and  
2 billions of documents relating to all Dell's computers? No.  
3 We look at what do the claims cover, what are the  
4 infringement contentions, and we only pick out those -- that  
5 section of the accused systems that fall within the scope of  
6 the claims.

7 That is what discovery is all about. Discovery isn't  
8 going into things that are not accused, that's irrelevant.

9 And as I said again, if this were a damages case, we  
10 would have produced the ACH documents to show that First  
11 Funds is using that effectively, that it caps damages  
12 because damages are capped by the cost of switching to a  
13 clearly non-infringing system, and also by switching to that  
14 it is not an admission that the existing system infringes or  
15 that First Funds infringes.

16 Your Honor, these documents, we produced these  
17 documents last year showing the difference between split  
18 funding and ACHing, showing which merchant process does  
19 split funding and which did ACHing. We produced that entire  
20 list. We produced all the figures.

21 Your Honor asked them to show which processes we had  
22 not identified. We identified them all, as shown on that  
23 slide.

24 Your Honor asked were they aware of all facts relevant  
25 to damages last year. They haven't disputed that. They

1 MR. SCHUURMAN: Your Honor, we would have to discuss  
2 it with our client too, of course.

3 THE COURT: Well, y'all do that, discuss it with your  
4 clients and see where they stand. Again, I'm only asking that  
5 because those are the kinds of questions you're going to get  
6 from Judge Davis on July 16th when you're in front of him for a  
7 bench trial, so just be prepared for that. Good explanations  
8 for why he's trying the case.

9 Okay. I believe that takes care of everything for now.  
10 Anything further from the Plaintiff?

11 MR. LEMIEUX: Nothing, Your Honor.

12 THE COURT: Anything further from the Defendants?

13 MR. SCHUURMAN: Nothing. Thank you, Your Honor.

14 THE COURT: Thank you. We are adjourned.

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16  
17  
18  
19 I certify that the foregoing is a correct transcript from  
20 the record of proceedings in the above-entitled matter.

21  
22   
23 Jan Mason

24 7-16-07  
25 Date